

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

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Biennial Regulatory Review –)
Amendment of)FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYParts 0, 1, 13, 22, 24, 26, 27, 80,)
87, 90, 95, 97, and 101)

WT Docket No. 98-20

Of the Commission's Rules)

To Facilitate the Development and Use)
of the Universal Licensing System in the)
Wireless Telecommunications Services)

Amendment of the Amateur Service)

Rules to Authorize Visiting Foreign)

WT Docket No. 96-188

Amateur Operators to Operate Stations)

In the United States)

RM-8677

Petition For Rulemaking

The Industrial Telecommunications Association (ITA) and the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (Blooston) (jointly, the "Petitioners"), pursuant to Section 1.401¹ of the Commission's rules, hereby respectfully submit a *Petition for Rulemaking* (Petition), which seeks to provide constructed licensees who have not filed the appropriate construction notification with an amnesty period, to more accurately reflect the Commission's database of constructed licensees. With this Petition, ITA and Blooston specifically seek to establish an amnesty period of 180 days, and to implement other steps to raise the awareness of Part 90 licensees that they must comply with the construction notification procedures for Private Land Mobile Radio Service (PLMRS) systems.

¹ 47 C.F.R. § 1.401.

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I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 13,000 applications per year on behalf of applicants seeking Commission authority to operate on a wide-variety of frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership including more than 2,100 licensed two-way land mobile radio communications users, PLMRS oriented radio dealer organizations, and the following trade associations:

Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
National Propane Gas Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communications Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc.

ITA's extensive involvement with the private land mobile industry expands into many services including: application preparation for public safety and first responders; coordination and engineering services for industrial/business users, commercial licensees under Part 90 of the Commission's rules, and PLMRS radio dealers; protection of petroleum service users through a contractual agreement with the American Petroleum Institute; an industry liaison for equipment manufacturers and end users, as well as band managers and end users; the Commission's first line of post-licensing, interference resolution; and various other services.

Blooston is a telecommunications law firm in Washington, D.C., which represents several hundred private radio licensees, ranging in size from Fortune 500 companies to individual contractors. The firm has assisted these entities with the Commission's licensing

process, and participates in the Land Mobile Communications Council (LMCC) through its representation of the Central Station Alarm Association, a Commission-certified frequency coordinator.

II. Background

On March 18, 1998, the Commission released a *Notice of Proposed Rulemaking* soliciting comments on rule changes to facilitate the establishment of the Universal Licensing System (ULS).² On October 21, 1998, the Commission released its *Report and Order* adopting rules and procedures associated with the implementation and use of the ULS, including the requirement that PLMRS licensees must for the first time file a construction notification, upon implementation of a licensed facility.³ On March 7, 2003, the Commission clarified the timelines associated with filing construction or coverage notifications for each of the services requiring such notifications.⁴ Petitioners now ask the Commission to provide a 180-day construction notification amnesty period for licensees who have constructed pursuant to their license, but have yet to file an FCC Form 601 notification.

III. The Commission Should Implement a PLMRS Amnesty Program for Late-filed Construction Notifications

Construction information has a direct effect on the accuracy and integrity of the ULS, and thus, the private land mobile operating environment. These two key factors permit the ULS to

² See, Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Notice of Proposed Rulemaking*, WT Docket No. 98-20, (rel. March 18, 1998) (ULS Notice).

³ See, Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Report and Order*, WT Docket No. 98-20 (rel. Oct. 21, 1998) (R&O), at para. 106.

⁴ See, Wireless Telecommunications Bureau Clarifies Construction Requirements for the Private Radio Services, *Public Notice*, DA 03-647, (rel. March 7, 2003).

remain an efficient and effective instrument for the Commission, frequency coordinators, and the public. Therefore, the construction notification requirement is an important one. However, by happenstance, the Commission did not require construction notifications for Part 90 PLMRS licensees for decades, and many licensees that grew accustomed to the “old” procedures have not realized that a construction notification is now required. Moreover, as discussed below, there is room for confusion about the applicability of the construction notification rule, especially for licenses granted before the effective date of the new requirement. Therefore, the focus of the construction notification process should be on ensuring that licensees are constructed and operating, not on the date a construction notification must be received by the Commission. Petitioners believe an amnesty period for licensees to file notifications would enhance the accuracy and integrity of the ULS, while relieving compliant operators from fear of Commission penalties or loss of license.

Petitioners would like to note the current request is limited to a specified amount of time (180 days) in which the Commission would allow a licensee to file construction or coverage notifications of constructed systems without penalty from the Commission. Petitioners do not suggest that the Commission change the deadlines for which the different radio services are required to construct. The Commission has recognized the importance of this issue by stating that the purpose of the construction and coverage notification procedures is not to cancel timely constructed licenses that failed to file timely notification, but to cancel licenses that did not meet the required construction and coverage requirements.⁵ The Commission specifically stated,

“the purpose of our construction notification procedures should be to verify whether licensees have in fact met their construction and coverage obligations, not to terminate licenses for legitimately operating facilities

⁵ R&O at ¶ 106.

based on a failure to notify by the licensee that could be the result of a mailing error.”⁶

As mentioned above, externalities could have an effect on meeting the 15-day deadline that the Commission allots for construction or coverage notifications. In an era of heightened security concerns, mail with a government office destination, understandably, tends to get special attention by the United States Postal Service. Mail processing may also take longer than expected to reach the licensee, which in turn may lead to notifications arriving at the Commission later than expected or in some cases, not at all. Moreover, with such a small window of opportunity, lost letters and failed transmissions could hinder timely-filed construction notifications. These were issues of concern when proposing to implement the construction and coverage notification policy and a few commenters noted that it might lead to licensees that timely constructed facilities losing their authorizations.⁷ This concern may have reached a new level in today’s environment of heightened alert.

When establishing the ULS, the Commission stated that one of its goals in the proceeding was to assure the collection of reliable licensing and ownership data.⁸ To maintain a reliable database it must be updated with the most current information. The Commission noted the importance of accurate, updated information in the R&O discussing implementation of the construction and coverage notification procedures.⁹ By its initiation of a spectrum audit in the PLMRS, the Commission implicitly elevated the importance of the ULS database possessing

⁶ R&O at ¶ 106.

⁷ R&O at ¶ 105.

⁸ ULS Notice at ¶ 8.

⁹ R&O at ¶ 106. It should be noted that inaccurate information might breed further inadequacies in future licensing. This is particularly troublesome since the ULS was established for the purpose of streamlining and integrating wireless licensing systems and databases.

accurate information.¹⁰ The Petitioners understand and support the important goals to be implemented by the license audit and construction notice requirement, and believe that their amnesty proposal would further these goals.

In most instances, the accuracy of the information in the ULS is dependant on accurate information being supplied by the individual licensees. Due to the sheer number of licensees, neither the Public Safety and Private Wireless Division nor the Enforcement Bureau has the ability to confirm or deny the validity of all information supplied to the Commission, requiring them to depend on licensees to supply accurate and complete information. However, because of the historical quirks associated with the Commission's transition to ULS, many licensees have not filed a notification of construction (and/or have not responded to the license audit letters) for a number of reasons:

1. The licensee changed address and did not realize the need to update the Commission's records, and therefore did not receive any construction reminder letter.
2. The licensee relied on an equipment sales representative to handle the FCC "paperwork", and does not realize that the Commission has implemented the notification requirement.
3. The licensee has heard about the notification requirement, but is not sure if it applies. In this regard, there is still room for confusion about whether the notification requirement applies to licenses granted *before* the effective date of the ULS rules, for which the construction deadline arose *after* the new rules became effective.
4. The licensee became aware of the notification requirement after the 15-day deadline passed, and fears the assessment of a fine or loss of license if a late notification is filed.

The proposed amnesty period will not address all of these circumstances. For this reason, the Petitioners do not propose amnesty as a final cure-all for ensuring the accuracy of the

¹⁰ See Wireless Telecommunications Bureau Announces Commencement of an Audit of the Construction and Operational Status of Private Land Mobile Radio Stations, *Public Notice*, DA 01-1575, (rel. Aug. 1, 2001).

Commission's records. However, if licensees are permitted to file their construction notification during an amnesty period, instead of having to file for an extension of time or a waiver of the Commission's rules (with the risk of enforcement action), licensees should be more forthcoming with accurate information, while the Commission could avoid the administrative burden of dealing with extension requests and waivers.

Therefore, the proposed amnesty program may address a significant portion of the situations outlined above, especially if the amnesty period is preceded by a strong FCC/industry effort to educate PLMRS licensees about the new requirements. The Petitioners' ideas for this education effort are set forth below. Unfortunately, the business of a private wireless licensee is not wireless telecommunications. These licensees use their radios for safety-of-life applications or for facilitating daily business activities. However, their primary focus is on repairing roads, or manufacturing goods, or whatever their primary business involves. The Commission can take official notice that it releases approximately a half-inch of paper orders, notices and other documents *daily*, and it can be difficult even for licensees that are in the telecommunications business to stay abreast of all regulatory developments. For entities that use radios as an adjunct to their primary activity, regulatory deadlines and rule changes are even more difficult to track, and many PLMRS licensees are simply unfamiliar with or unaware of many practices and procedures at the Commission. In some cases, these licensees need to consult their counsel after receiving letters from the Commission, such as a construction notification reminder. In other instances, licensees contact the Commission or ITA due to confusion. In either situation a significant amount of time may be needed for a licensee to complete the desired task. Petitioners ask the Commission to be cognizant of these types of users (many operating only one or two stations) as these licensees may be unaware of the Commission's licensing and validation

processes, but are dependant on communications systems for mission-critical operations in their daily business activities. An amnesty period coupled with education efforts will help to address these situations. However, there will always be a need for leniency in dealing with licensees caught in the transition to ULS.

IV. The PLMR Industry and the Commission Should Work Together to Raise Licensee Awareness of the Construction Notification Requirement

For an amnesty period to ultimately serve its intended purpose of improving the accuracy and integrity of the ULS, licensees need to be aware of the opportunity extended by the Commission in allowing an amnesty period. Petitioners believe this is where the frequency advisory committees (FAC), PLMRS trade associations, and the communications bar will be valuable resources for the Commission. Petitioners would be more than willing to assist the Commission in alerting licensees of an amnesty period. Although it cannot account for the positions of other organizations, Petitioners anticipate that other FACs would be also be willing to assist the Commission in efforts to support a construction and coverage notification amnesty period. Petitioners believe that with a joint effort by the Commission and FAC's, a construction amnesty period would benefit all parties involved in the licensing process: the Commission, the FAC's, and the licensees.

Petitioners suggest that the following specific steps be taken to educate licensees about the construction notification requirement (and the need to respond to license audit inquiries):

1. The Commission should post a prominent banner on its website alerting PLMRS licensees of these requirements, and the potential loss of license that may accompany a non-response.
2. The Commission should include with each license it sends to a licensee a form letter, describing the need to timely construct the newly-authorized station and file a notification of construction; and urging the licensee to determine if they hold older licenses for which a construction notification and/or license audit response is still needed.

3. The Commission should ask each FAC to send a similar form letter as part of its instructions to each applicant for whom the FAC performs coordination services. ITA is prepared to implement this procedure.
4. The Commission should ask each FAC to prominently display information about the construction notification requirement and license audit on its website. ITA is prepared to include such information in its website, and in periodic memoranda to its memberships.
5. The Commission should request that each law firm that files large numbers of PLMRS applications send a similar form letter to their clients, and otherwise disseminate this information. Blooston is prepared to implement this procedure, and to include similar information on its website, and in its periodic newsletter to PLMRS clients.
6. The Commission should encourage support from its field offices in determining if callers and/or visitors are PLMRS licensees that should provide the Commission with construction notifications or audit responses through personal interaction or voicemail attendants that mention the amnesty period.
7. The Commission should request that equipment manufacturers and vendors include information about the construction notification requirement in their packaging. While a number of private radio licensees may not hire counsel or belong to an industry group such as ITA, all licensees must interact at some point with an equipment manufacturer or vendor.
8. The Commission and the private user industry should prevail upon trade magazines and newsletters, such as RCR, Washington Radio Report, and others to help disseminate information about the requirements.

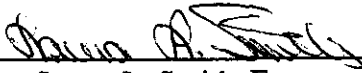
Attached hereto is suggested wording for form letters, website postings, and newsletter articles that can be used to raise awareness of the construction notification and license audit requirements. If the above suggestions are implemented, along with an amnesty period, the Commission should be able to continue its substantial progress toward ascertaining the status of PLMRS licenses, and thereby improve the accuracy of the database that is at the heart of the licensing process.

IV. Conclusion

ITA and Blooston urge the Commission to establish a 180-day amnesty period for a licensee to file a construction notification with the Commission. An amnesty period for licensees to file construction notifications would benefit the Commission by saving time addressing waiver requests, and the public interest will be met by enhancing the integrity and the accuracy of the ULS database. The Petitioners stand ready to work with the Commission on this issue.

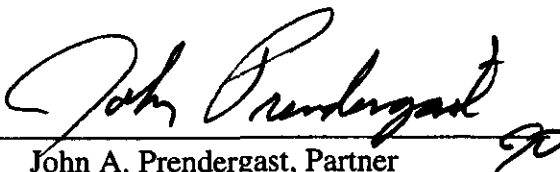
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robin Landis, do hereby certify that on the 5th day of May 2003, I forwarded to the parties listed below a copy of the foregoing Petition for Rulemaking of the Industrial Telecommunications Association, Inc. and the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast via hand delivery:

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Suggested Wording for Licensee Awareness Notifications:

***** URGENT!! *****

**PRIVATE RADIO LICENSEES MUST NOTIFY FCC OF
LICENSE STATUS UPON CONSTRUCTION, OR IN RESPONSE
TO FCC INQUIRY**

**FAILURE TO DO SO COULD RESULT IN LICENSE CANCELLATION,
OTHER PENALTIES**

Private Mobile Radio operations are licensed by the Federal Communications Commission (FCC), and your radio license will remain valid only if you meet certain ongoing obligations. In particular, you **MUST**:

1. **CONSTRUCT** your system within the required construction period (usually one year), and at the location, antenna height, etc. shown on your license;
2. **NOTIFY THE FCC UPON CONSTRUCTION**, by filing FCC Form 601. Note: This notification on Form 601 is *in addition to* the Form 601 application you filed to obtain your license in the first place.
3. **RENEW YOUR LICENSE**, by filing a renewal application before the end of the license term (which is generally five years).
4. **KEEP YOUR ADDRESS UP TO DATE**, so that any FCC inquiries or notices about your license reach you in time.

Failure to take any of the above steps could result in the cancellation of your FCC license, and the assessment of fines by the FCC if you have operated without a valid license. It is vital that you take a moment to make sure you are in compliance with these requirements, and that you have a system in place to make sure you continue to comply in the future. If you have any questions, you can contact the FCC, or an authorized frequency coordinator, or your communications counsel.

FCC AMNESTY PROGRAM

If you have timely constructed your system, but were previously unaware of the need to notify the FCC upon construction, you should do so right away. The FCC is accepting

such notifications under an amnesty program, until _____, 2003. If you submit your notification during this amnesty period, your license will not be cancelled, and you will not be subject to a fine for late filing of your notice. **NOTE:** This amnesty program does not cover situations in which a licensee failed to timely construct their station.

YOU MUST RESPOND TO FCC AUDIT LETTERS

The FCC is auditing Private Radio licensees to determine the status of EVERY license. Licensees need to respond to the license audit letters that have been sent to their last known address. In the absence of a response to the latest round of letters, the likely outcome is cancellation of the license(s) referred to in the letter, and possibly a fine for failure to respond to an FCC inquiry. **Therefore, any Private Radio licensee receiving such a letter should respond even if they are no longer using their license. A copy of each response should be retained, with proof of delivery. And all licensees who have not received letters covering all of their call signs should proactively check the FCC's website to see if a letter has been sent, so they can obtain a copy and respond. The web address is:**

<http://wireless.fcc.gov/licensing/audits/plmrs/index.html>